

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

3 JOHN TURNER,

Case No.: 2:22-cv-00756-APG-NJK

4 Plaintiff

Dismissal Order

5 v.

6 MARTINEZ, et al.,

7 Defendants
8

9 Plaintiff John Turner brings this civil-rights action under 42 U.S.C. § 1983 to redress
10 constitutional violations that he claims he suffered while incarcerated at the Clark County
11 Detention Center. ECF No. 1-1. On July 15, 2022, I denied Turner’s application to proceed *in*
12 *forma pauperis* and ordered him to pay the \$402 filing fee in full by August 19, 2022, because he
13 had at least three strikes under 28 U.S.C. § 1915(g). ECF No. 6. I warned Turner that the action
14 would be dismissed if he failed to pay the \$402 filing fee by that deadline. *Id.* at 2. That
15 deadline expired and Turner did not pay the filing fee, move for an extension, or otherwise
16 respond.

17 **I. Discussion**

18 District courts have the inherent power to control their dockets and “[i]n the exercise of
19 that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.
20 *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may
21 dismiss an action based on a party’s failure to obey a court order or comply with local rules. *See*
22 *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply
23 with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S.*
Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court

1 order). In determining whether to dismiss an action on one of these grounds, the court must
2 consider: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to
3 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
4 disposition of cases on their merits; and (5) the availability of less drastic alternatives. *See In re*
5 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone*
6 *v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

7 The first two factors, the public’s interest in expeditiously resolving this litigation and the
8 court’s interest in managing its docket, weigh in favor of dismissal of Turner’s claims. The third
9 factor, risk of prejudice to defendants, also weighs in favor of dismissal because a presumption
10 of injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the
11 court or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The
12 fourth factor—the public policy favoring disposition of cases on their merits—is greatly
13 outweighed by the factors favoring dismissal.


14 The fifth factor requires me to consider whether less drastic alternatives can be used to
15 correct the party’s failure that brought about the court’s need to consider dismissal. *See Yourish*
16 *v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic
17 alternatives *before* the party has disobeyed a court order does not satisfy this factor); *accord*
18 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the persuasive
19 force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic alternatives
20 prior to disobedience of the court’s order as satisfying this element[,]” *i.e.*, like the “initial
21 granting of leave to amend coupled with the warning of dismissal for failure to comply[,]” have
22 been “eroded” by *Yourish*). Courts “need not exhaust every sanction short of dismissal before
23 finally dismissing a case, but must explore possible and meaningful alternatives.” *Henderson v.*

1 *Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically proceed
2 until and unless Turner pays the \$402 filing fee, the only alternative is to enter a second order
3 setting another deadline. But the reality of repeating an ignored order is that it often only delays
4 the inevitable and squanders the court's finite resources. The circumstances here do not indicate
5 that this case will be an exception: there is no hint that Turner needs additional time or evidence
6 that he did not receive the original order. Setting another deadline is not a meaningful alternative
7 given these circumstances. So the fifth factor favors dismissal.

8 **II. Conclusion**

9 Having thoroughly considered these dismissal factors, I find that they weigh in favor of
10 dismissal. It is therefore ordered that this action is dismissed without prejudice based on Turner's
11 failure to pay the \$402 filing fee in compliance with my July 15, 2022, order. The Clerk of Court
12 is directed to enter judgment accordingly and close this case. No other documents may be filed in
13 this now-closed case. If Turner wishes to pursue his claims, he must file a complaint in a new
14 case and pay the full filing fee.

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16 Dated: September 6, 2022

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19 U.S. District Judge
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